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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C.

JAN - 7 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of Implementation)
of the Pay Telephone Reclassification) CC Docket No. 96-128
and Compensation Provisions) Second Report and Order
of the Telecommunications Act of 1996)

AFFIDAVIT OF A. JOHN YOGGERST

State of Texas)
County of Bexar)

A. JOHN YOGGERST, being duly sworn, deposes and says:

1. This Affidavit is being submitted to the Federal Communications Commission (the "Commission") as a comment to certain information contained in AT&T Petition for Reconsideration (the "Petition") of the Commission's Second Report and Order submitted by AT&T Corporation ("AT&T") in the above-referenced matter on or about December 1, 1997. The Petition addressed the matter of dial around compensation ("DAC") for non-coin calls originating from pay phones. Specifically, on page 15 of AT&T's Petition, AT&T referenced "an in-depth analysis by Southwestern Bell Corporation ("SBC") of costs incurred in the operation of its pay phones" provided by a third party (the "Information").

2. It appears from the paperwork attached to the Petition that I am the "third party" referred to in AT&T's Petition, and the Affidavit of Mr. David C. Robinson, District Manager in AT&T's Consumer Sales Division, signed by Mr. Robinson on or about November 26, 1997, and filed with the Petition.

3. My purpose in providing this Affidavit is not to address the Commission's decision regarding DAC, but to clarify the record as the it relates to (i) the Information

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attached to the AT&T Petition to the extent derived from me, and (ii) AT&T's interpretation and analysis of that Information.

4. On November 8, 1993, I entered into negotiations with SBC related to the possible acquisition of the public telephone line of business (the "Business Transaction") from SBC. Pursuant to the negotiations at hand, SBC provided me with a very preliminary analysis of SBC's pay phone business (the Information referenced above). This Information included operating data, revenues, expenses, assets and financial projections.

5. As a part of my business plan I approached AT&T as a possible participant in my purchase of the SBC pay phone business. On October 4, 1994, AT&T executed a Non-Disclosure Agreement (the "AT&T Agreement") signed by Mr. Phillip D. Brown, Account Executive, Consumer Sales Division (Exhibit I), concerning my Business Transaction with SBC.

6. Under the protection and restrictions of the AT&T Agreement, I provided certain Information to AT&T which SBC had provided to me regarding the Business Transaction. Paragraph 4 of the AT&T Agreement provides that: "The Recipient shall not use the Information for any purpose except for discussions regarding the Project (that is; my Business Transaction)."

7. This Information was provided to AT&T for two purposes:

A) to determine a commission rate which AT&T would pay me or a successor entity to be formed in return for AT&T being selected as the exclusive pre-subscribed interLATA inter-exchange carrier; and,

B) to evaluate my business plan with a view toward AT&T providing up-front compensation for being selected as the exclusive pre-subscribed interLATA inter-exchange carrier.

The up-front compensation was intended to provide a portion of the overall financing for the Business Transaction in return for selecting AT&T as the exclusive interLATA inter-exchange carrier.

8. It is my opinion and position that AT&T's use of this Information in its Petition contravenes the purpose for which the Information was provided and that this Information is still protected under the terms of the AT&T Agreement. It is also my opinion that AT&T's use of this Information for purposes other than its evaluation of the Business Transaction and specifically as evidence in an adversary proceeding is an ethical lapse, if not a legal issue.

9. The Information which SBC provided for my evaluation of the Business Transaction was prepared very early in our discussions. I later learned the Information I provided to AT&T was not complete because it omitted certain costs a knowledgeable analyst would normally associate with the pay phone line of business. However, I did believe the Information as it related to the number of calls and number of telephones was reasonably accurate at the time the Information was provided by SBC. The expenses and the cost of delivering a completed call were under-stated and I did not rely on that portion of the Information as a final measurement of the actual cost of completing a pay phone call even in 1994. (Nor, three years later, would anyone familiar with pay phone operations rely on this Information, unless, presumably, one wished to understate the actual cost of completing a call.)

10. In addition to the SBC Information, AT&T had access to financial projections I prepared on a going forward basis that reflected a substantially higher cost

to complete a call. Apparently, AT&T elected not to use these financial projections in its analysis or Attachments to its Petition. In this regard and by way of example:

(A) Mr. Robinson, the AT&T District Manager, elected to use 478 calls per month from an SBC pay phone that resulted in a lower cost to complete a call, even though, in my opinion, some relatively simple calculations of the SBC Information indicated that a typical SBC pay phone averaged 434 calls per month. If Mr. Robinson had made these simple calculations, he would have determined a higher cost to complete a call than he expounds in his Affidavit.

(B) The SBC Information projected a going forward commission rate of 16.65 percent to premise owners. However, as AT&T should know, the trend is toward higher premise owner commission rates. As early as 1990, AT&T was paying the Army & Air Force Exchange Service ("AAFES") 26 percent on AAFES Contract # HQ 87-PDSS-021(as amended). I obtained a copy of this contract and its amendments through a Freedom of Information Act request to AAFES, the release of which AT&T approved.

(C) The access line rate I used for my financial projections was considerably higher than the \$23.35 per month per line that AT&T used in its analysis of the SBC Information. *At the time I provided the Information to AT&T, it is my understanding SBC did not have a tariffed rate for dumb terminal access lines.* Had AT&T requested the tariffs for the various states where SBC operates, it would have found that access line charges are generally much higher than \$23.35 per month, once all the additional charges for pay phone related services and taxes are included.

11. In subsequent meetings and correspondence with SBC, additional costs were unveiled which would affect the operating results of the Business Transaction.

This additional information included tariffed rates for smart pay phone access lines. I did not forward this new information to AT&T because our negotiations had not produced an acceptable arrangement and therefore AT&T was no longer involved in the negotiations at this time. In my opinion AT&T is using certain Information (Attachment I to Robinson's Affidavit) that is inaccurate and incomplete and thus, in my opinion, AT&T's analysis submitted in the Petition as Attachments II and III to Robinson's Affidavit is also inaccurate.

12. I was negotiating a very complex transaction with SBC, and AT&T was desirous of being the exclusive pre-subscribed interLATA inter-exchange carrier if this Business Transaction were concluded. Apparently, AT&T chose to use the Information in its analysis to attempt to influence the Commission's decision in the above-referenced matter, its Non-Disclosure Agreement notwithstanding. This Information was provided for other purposes entirely and in my opinion its use in this proceeding is inappropriate. The use of this Information creates an inaccurate perspective and therefore should be given no credence in consideration of the matter before the Commission.

This concludes my Affidavit.

January 6, 1998

A. John Yoggerst
9315 Contessa
Bexar County
San Antonio, Texas 78216

SIGNED:


A. John Yoggerst

STATE OF TEXAS)

COUNTY OF BEXAR)

BEFORE ME, the undersigned authority, on this day personally appeared
A. John Yoggerst, known to me, who having been duly sworn, upon his oath deposes
and says as follows:

My name is A. JOHN YOGGERST, and I am declarant. I have read the
foregoing and swear the same is true and correct.


A. JOHN YOGGERST

SUBSCRIBED AND SWORN TO BEFORE ME on this 6th day of
January, 1998, to certify which witness my hand and seal of office.




NOTARY PUBLIC, STATE OF TEXAS

file:at&t

NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement ("Agreement") is made as of the 3rd day of October, 1994, between AT&T Corp. located in Dallas, Texas ("AT&T") and A. John Yoggerst, located at 9315 Contessa, San Antonio, Texas 78216 ("Yoggerst"), and relates to the prospective exchange of proprietary and/or confidential information during discussions concerning a potential business transaction involving the pay phone operations of Southwestern Bell Telephone Company ("the project") and any potential involvement of AT&T.

As used in this Agreement, the term "Recipient" includes any of the officers, directors or employees of AT&T or Yoggerst or any subsidiary owned or controlled by AT&T or Yoggerst, and includes without limitation any of the Recipient's attorneys, accountants, consultants, financial advisors or agents who are not employees of the Recipient (collectively, "Representatives"). AT&T and Yoggerst wish to protect their respective proprietary and confidential information concerning the Project ("Information") and, towards that end, hereby agree as follows:

1. Identification of Proprietary and Confidential Information. The parties agree that Information shall be subject to the terms of this Agreement only if it is identified as follows: (a) if the Information is in written or other tangible form, it shall be clearly marked or labeled "Proprietary" or "Confidential" or words of similar import; and (b) if the Information is orally disclosed, the disclosing party shall specifically state at the time of such disclosure what portion thereof is deemed by the disclosing party to be proprietary and confidential.
2. Non-Disclosure to Third Parties. The Recipient of the Information shall treat the Information as the proprietary and confidential information of the disclosing party, shall not disclose the Information to any other person or entity except as authorized herein, and shall safeguard the Information at least to the extent that it would its own proprietary and confidential information, but in any event shall use at least reasonable care to safeguard the Information. The Recipient shall immediately notify the disclosing party of any request by any third person that the Information be disclosed and shall cooperate with the disclosing party in its efforts to protect the Information from disclosure.
3. Publicity. Except as may, in the opinion of counsel, be required by law, neither party shall publicly announce or disclose the terms or conditions of this Agreement, or advertise or release any publicity regarding this Agreement or the fact that the aforesaid discussions are taking place or the nature of such discussions, without the prior written consent of the other party. This provision shall survive the expiration, termination or cancellation of this Agreement.

4. Ownership and Use of Information. All Information delivered by one party to the other party pursuant to this Agreement shall be and remain the property of the disclosing party, and any documents containing or reflecting the Information, and all copies thereof, shall be promptly returned to the disclosing party upon written request, or destroyed at the disclosing party's option; provided that any memoranda, notes or other writings prepared by the Recipient based on the Information may be destroyed by the Recipient rather than returned to the disclosing party. The Recipient shall not use the Information for any purpose except for the discussions regarding the Project. Nothing herein shall be construed as granting or conferring any rights by license or otherwise, express or implied, regarding any idea made, conceived or acquired prior to or after the date hereof, nor as granting any right with respect to the use or marketing of any product or service.

5. Term of Agreement. This Agreement shall terminate one (1) year after the date of execution hereof. The obligations of the parties under this Agreement shall continue and survive the termination of the Agreement for a period of two (2) years from the date of such termination.

6. Employee Access and Control of Information. information shall be divulged only to those employees of Recipient having a need to know such information. Those employees shall be advised of their obligation to keep such information confidential.

7. Exceptions. The obligations contained herein shall not apply to: (a) information which is now or hereafter enters the public domain without a breach of this Agreement by the Recipient; (b) information known to the Recipient prior to the time of disclosure by the disclosing party or independently developed by the Recipient's personnel who do not have access to the information; (c) information disclosed in good faith to the Recipient by a third person legally entitled to the best of Recipient's knowledge, to disclose the same.

8. Remedies. It is understood and agreed that money damages would not be a sufficient remedy for any breach of this Agreement by a party or its Representatives and that the nonbreaching party shall be entitled to specific performance as a remedy for any such breach and/or to an injunction prohibiting any further breach. Such remedy shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or equity to the nonbreaching party. In the event of any legal proceedings to enforce or protect any rights under this Agreement, the prevailing party shall be entitled to recover its costs (including reasonable attorney's fees) incurred in connection herewith.

9. Miscellaneous. The obligations of the parties shall be binding on and inure to the benefit of their respective heirs, successors, assigns, and affiliates. This Agreement may be amended or modified only by a subsequent agreement in writing. This Agreement shall be construed and enforced according to the

laws of the State of Texas. This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof.

Executed as of the date first above written by the parties' undersigned authorized representatives.

AT&T

By: Phillip D. Brown
Name: PHILLIP D. BROWN
Title: ACCOUNT EXECUTIVE

Yoggerst

By: John Yoggerst
Name: A. John Yoggerst
Title: Owner

MEMORANDUM



DATE: OCTOBER 3, 1994

TO: MR. JOHN YOGGERST

FROM: PHIL BROWN

RE: ORGANIZATION

EARLIER TODAY YOU HAD A QUESTION ABOUT MY DEPARTMENT . BELOW IS A LIST OF PEOPLE AND THEIR JOB TTLES. I OFFER THIS FOR INFORMATIONAL PURPOSES ONLY.

JOHN POWELL.....SALES VICE PRESIDENT.....LIBERTY CORNER, N.J.

MARK EVANS.....DIVISION MANAGER.....LIBERTY CORNER, N.J.

GEORGE KOENIG.....MARKET MGR. INDEPENDENT PAYPHONE

PROVIDERS / PAYPHONE AGGREGATORS.....LIBERTY CORNER, N.J.

KATHY LAWRENCE.....REGIONAL SALES DIR.....ATLANTA, GA.

RANDY HARP.....REGIONAL SALES MGR.....DALLAS, TX.

PHIL BROWN.....ACCOUNT EXECUTIVE.....DALLAS,

PLEASE DIRECT ALL QUESTIONS TO EITHER RANDY OR MYSELF.



AT&T FAX TRANSMISSION

DATE: 10-4-94 TIME:

PAGES: 5 (INCLUDING COVER)

FROM: PHIL BROWN
CONSUMER SALES DIVISION

PHONE #: 214-778-4028 or
800-228-5195

FAX #: 214-778-4055

TO: JOHN YOGGERST

PHONE #:

FAX #: 210-524-9394

JOHN-

YOUR NON-DISCLOSURE & OUR ORGANIZATIONAL
LIST. ORIGINAL NON-DISCLOSURE WILL BE OVER-
NIGHTED TO YOU.

-PHIL
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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of January, 1998, I caused copies of the foregoing Affidavit of A. John Yoggerst to be served upon the parties on the attached service list by first-class mail.


Steve Knerr

SERVICE LIST

Federal Communications Commission	Christopher J. Wright Daniel M. Armstrong John E. Ingle Laurence N. Bourne Carl D. Lawson Federal Communications Commission 1919 M Street, N.W. Washington, DC 20554
Federal Communications Commission	Chief, Enforcement Division Common Carrier Bureau Stop 1600A, Room 6008 Federal Communications Commission 2025 M Street, N.W. Washington, DC 20554
International Transcription Service	ITS 1231 20 th Street, N.W. Washington, DC 20036
U.S. Department of Justice	Donald J. Russell Telecommunications Task Force Antitrust Division U.S. Department of Justice City Center Building, Suite 8000 1401 H Street, N.W. Washington DC 20001
U.S. Department of Justice	Robert B. Nicholson Robert J. Wiggers U.S. Department of Justice Antitrust Division, Appellate Section 950 Pennsylvania Avenue, N.W., Room 3224 Washington DC 20530-0001
Airtouch Paging	Mark A. Stachiw Airtouch Paging 12221 Merit Drive, Suite 800 Dallas, TX 75251
Airtouch Paging	Carl W. Northrop E. Ashton Johnston Paul, Hastings, Janofsky & Walker 1299 Pennsylvania Avenue, NW, 10th Floor Washington, DC 20004-2400

America's Carriers Telecommunications
Association

Charles H. Helein
Helein & Associates, P.C.
8180 Greensboro Drive, Suite 700
McLean, VA 22102

American Public Communications Council

Albert H. Kramer
Robert F. Aldrich
Dickstein, Shapiro, Morin & Oshinsky, L.L.P.
2101 L Street, N.W.
Washington, D.C. 20037-1526

Arch Communications Group, Inc.

E. Ashton Johnston
Paul, Hastings, Janofsky
& Walker
1299 Pennsylvania Avenue, N.W.
10th Floor
Washington, DC 20004

Arch Communications Group, Inc.

Kenneth D. Patrich
Carolyn W. Malanga
Wilkinson, Barker,
Knauer & Quinn
1735 New York Avenue, NW
Suite 600
Washington, DC 20006

AT&T

Mark C. Rosenblum
Richard H. Rubin
Jodie Donovan-May
AT&T
295 North Maple Avenue
Room 325213
Basking Ridge, NJ 07920

AT&T

David Carpenter
Joseph D. Kearney
Sidley & Austin
One First National Plaza
Chicago, IL 60603

Cable & Wireless, Inc.

Rachel J. Rothstein
Cable & Wireless, Inc.
8219 Leesburg Pike
Vienna, VA 22182

Communications Central Inc.	Barry E. Selvidge Communications Central Inc. 1150 Northmeadow Parkway, Suite 118 Roswell, GA 30076
Competition Policy Institute	John Windhausen, Jr. Competition Policy Institute 1156 15 th Street, N.W., Suite 310 Washington, DC 20005
Competitive Telecommunications Assn.	Danny E. Adams Steven A. Augustino Kelley, Drye, & Warren, LLP 1200 19th Street, N.W., Suite 500 Washington, DC 20036
Competitive Telecommunications Assn.	Genevieve Morelli Competitive Telecommunications Association 1900 M Street, N.W., Suite 800 Washington, DC 20036
The Consumer-Business Coalition for Fair Payphone-800 Fees	Howard J. Symons Sara F. Seidman Yaron Dori Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, PC 701 Pennsylvania Avenue, N.W. Washington, DC 20004-2608
The Consumer-Business Coalition for Fair Payphone-800 Fees	Daniel R. Barney Robert Digges, Jr. ATA Litigation Center 2200 Mill Road Alexandria, VA 22314
Consumer Federation of America	Mark Cooper Consumer Federation of America 1424 16 th Street, N.W. Washington, DC 20036
Direct Marketing Association	Ian D. Volner Heather L. McDowell Veneable, Baetjer, Howard & Civiletti, LLP 1201 New York Avenue, NW, Suite 1000 Washington, DC 20005

Dispatching Parties	Alan S. Tilles Meyer, Faller, Weisman & Rosenberg, PC 4400 Jenifer Street, N.W., Suite 380 Washington, DC 20015
Excel Telecommunications, Inc.	Dana Frix Pamela S. Arluk Swidler & Berlin, Chtd. 3000 K Street, N.W, Suite 300 Washington, DC 20007
Frontier Corporation	Michael Shortley Frontier Corporation 180 South Clinton Avenue Rochester, NY 14646
GE Capital Communication Services Corp.	Meredith Gifford GE Capital Communication Services Corp. 6540 Powers Ferry Road Atlanta, GA 30339
GE Capital Communication Services Corp.	Colleen Boothby Janine F. Goodman Levine, Blaszak, Block & Boothby, LLP 1300 Connecticut Avenue, NW, Suite 500 Washington, DC 20036
General Communication Inc.	Kathy L. Shobert General Communication Inc. 901 15 th Street, N.W., Suite 900 Washington, DC 20005
Illinois Public Telecommunications Association	Michael W. Ward John F. Ward, Jr. Henry T. Kelly O'Keefe, Ashenden, Lyons & Ward 30 N. LaSalle Street, Suite 4100 Chicago, IL 60602
Inmate Calling Service Providers Coalition	Albert H. Kramer Robert F. Aldrich Jacob S. Farber Dickstein, Shapiro, Morin & Oshinsky, LLP 2101 L Street, N.W. Washington, D.C. 20037-1526

International Telecard Association

Glenn B. Manishin
Michael D. Specht
Blumenfeld & Cohen - Technology Law Group
1615 M Street, N.W., Suite 700
Washington, DC 20036

IPSP Ad Hoc Committee

Charles H. Helein
Helein & Associates, P.C.
8180 Greensboro Drive, Suite 700
McLean, VA 22102

LCI International Telecom Corp.

Danny E. Adams
Steven A. Augustino
John J. Heitmann
Kelley Drye & Warren LLP
1200 19th Street, N.W., Suite 500
Washington, DC 20036

MCI

Mary J. Sisak
Mary L. Brown
MCI Telecommunications
1801 Pennsylvania Avenue, N.W.
Washington, DC 20006

MCI

Donald B. Verrilli, Jr.
John B. Morris, Jr.
Jenner & Block
601 13th Street, N.W.
Washington, DC 20005

Midcom Communications Inc.

Steven P. Goldman
Midcom Communications Inc.
26913 Northwestern Highway, Suite 165
Smithfield, MI 48034

Midcom Communications Inc.

Bradley D. Toney
Midcom Communications Inc.
1111 Third Avenue, Suite 1600
Seattle, WA 98101

Midcom Communications Inc.

Laura H. Phillips
Loretta J. Garcia
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Ave., NW, #800
Washington, DC 20036-6802

Mobile Telecommunications Technologies Corp.

Thomas Gutierrez
J. Justin McClure
Lukas, McGowan, Nace & Gutierrez
1111 19th Street, N.W., Suite 1200
Washington, DC 20036

NATSO

Lisa Mullings
NATSO, Inc.
1199 North Fairfax Street, Suite 801
Alexandria, VA 22314-1492

Oncor Communications, Inc.

Mitchell F. Brecher
Fleischman and Walsh, LLP
1400 16th Street NW
Washington, DC 20036

PageMart Wireless, Inc.

Phillip L. Spector
Patrick S. Campbell
Paul, Weiss, Rifkind, Wharton & Garrison
1615 L Street, N.W., Suite 1300
Washington, DC 20036

Paging Network, Inc.

Judith St. Ledger-Roty
Wendy I. Kirchick
Kelley, Drye & Warren, LLP
1200 19th Street, N.W., Suite 500
Washington, DC 20036

Peoples Telephone Company, Inc.

Eric L. Bernthal
Michael S. Wroblewski
Latham & Watkins
1001 Pennsylvania Avenue NW, Suite 1300
Washington, DC 20004

Peoples Telephone Company, Inc.

Bruce W. Renard
Peoples Telephone Company, Inc.
2300 N.W. 89th Place
Miami, FL 33172

PCIA

Robert L. Hoggarth
Personal Communications Industry Association
500 Montgomery Street, Suite 700
Alexandria, VA 22314

PCIA

Scott Blake Harris
Kent D. Bressie
Gibson, Dunn & Crutcher, LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5303

RBOC/GTE/SNET Payphone Coalition

Michael K. Kellogg
Kevin Cameron
Aaron Panner
Kellogg, Huber, Hansen, Todd & Evans
1301 K Street, N.W., Suite 1000 West
Washington, DC 20005

RCN Telecom Services, Inc.

Dana Frix
William B. Wilhelm, Jr.
Swidler & Berlin, Chtd.
3000 K Street, N.W., Suite 300
Washington, DC 20007

Source One Wireless II, LLC

David L. Hill
Audrey P. Rasmussen
O'Connor & Hannan, LLP
1919 Pennsylvania Avenue, NW, Suite 800
Washington, DC 20006

Sprint Corporation

Leon M. Kestenbaum
Jay C. Keithley
H. Richard Juhnke
Sprint Corporation
1850 M Street, N.W., 11th Floor
Washington, DC 20036

Telaleasing Enterprises, Inc.

Theodore C. Rammelkamp, Jr.
Telaleasing Enterprises, Inc.
601 West Morgan
Jacksonville, IL 62650

Telecommunications Resellers
Association

Charles C. Hunter
Catherine M. Hannan
Hunter Communications Law Group
1620 I Street, NW, Suite 701
Washington, DC 20006

Teleport Communications Group Inc.

Teresa Marrero
Teleport Communications Group Inc.
Two Teleport Drive
Staten Island, NY 10311

United States Telephone Association

Mary McDermott
Linda Kent
Keith Townsend
Hance Haney
USTA
1401 H Street, N.W., Suite 600
Washington, DC 20005

WorldCom Inc.

Richard S. Whitt
WorldCom Inc.
1120 Connecticut Avenue, NW. Suite 400
Washington, DC 20036

WorldCom Inc.

Douglas F. Brent
WorldCom Inc.
9300 Shelbyville Road, Suite 700
Louisville, KY 40222

January 7, 1998